

AMENDED IN SENATE APRIL 4, 2011

SENATE BILL

No. 595

Introduced by Senator Wolk

February 17, 2011

An act to amend *Section 523 of the Harbors and Navigation Code*, and to amend Section 6302.1 of, and to add Sections 6302.2, 6302.3, 6302.4, and 6302.5 to, the Public Resources Code, relating to tidelands and submerged lands.

LEGISLATIVE COUNSEL'S DIGEST

SB 595, as amended, Wolk. Tidelands and submerged lands: removal of vessels.

Existing law authorizes any peace officer, as described, any employee or officer of the State Lands Commission designated by the commission, or any lifeguard or marine safety officer employed by a county, city, or district, while engaged in the performance of official duties, to remove, and, if necessary, store a vessel, as defined, removed from a public waterway under specified circumstances.

This bill would eliminate the authority of any employee or officer of the State Lands Commission designated by the commission, while engaged in the performance of official duties, to remove and, if necessary, store a vessel removed from a public waterway.

Existing law authorizes the ~~State Lands Commission~~ *commission* to remove from areas under its jurisdiction any vessel, boat, raft, or other similar watercraft that is left unattended and is moored, docked, or beached as to obstruct traffic or to create a hazard to other vessels or property, that poses critical and immediate danger to navigation or the public health, safety, or welfare, or that hinders navigation or creates a public nuisance.

This bill would revise those provisions to authorize the commission to remove those watercraft in those and similar conditions immediately and without notice. The bill would authorize the commission to remove and dispose of those watercraft and to remove and dispose, from areas under its jurisdiction, watercraft that have been placed on state lands without its permission if, prior to removal, the commission gives a 30-day notice by posting notice on the watercraft and notifying the owner and any lienholder, if known.

Existing law authorizes the commission, through appropriate action in the courts, to remove or destroy a vessel, boat, watercraft, or other similar obstruction that hinders navigation or otherwise creates a public nuisance in areas under the commission's jurisdiction.

This bill would, instead, provide that a hulk, derelict, wreck, or parts of a ship, vessel, or other watercraft sunk, beached, grounded, or floating and allowed to remain in an unseaworthy or dilapidated condition in areas under the commission's jurisdiction for a period longer than 30 days without its consent is abandoned property. The bill would establish procedures for the commission to sell, destroy, or otherwise dispose of this property. The bill would require that any proceeds from the sale of this property, less the commission's costs, be deposited into the General Fund. The bill would further authorize the commission, at its discretion, to remove an abandoned or derelict vessel on a navigable waterway that is not under its jurisdiction, if requested to do so by another public entity that has regulatory authority over the area where the vessel is located.

This bill would exempt the above-described actions of the commission related to the removal, disposal, and destruction of certain vessels, boats, rafts, watercraft, or other similar obstructions that hinder navigation or otherwise create a public nuisance from laws or regulations that govern the acquisition, removal, disposal, or destruction of state property by a state agency.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 523 of the Harbors and Navigation Code
- 2 is amended to read:
- 3 523. (a) Any peace officer, as described in Section 663, ~~any~~
- 4 ~~employee or officer of the State Lands Commission designated by~~

1 ~~the State Lands Commission~~, or any lifeguard or marine safety
2 officer employed by a county, city, or district while engaged in
3 the performance of official duties, may remove, and, if necessary,
4 store a vessel removed from a public waterway under any of the
5 following circumstances:

6 (1) When the vessel is left unattended and is moored, docked,
7 beached, or made fast to land in a position that obstructs the normal
8 movement of traffic or in a condition that creates a hazard to other
9 vessels using the waterway, to public safety, or to the property of
10 another.

11 (2) When the vessel is found upon a waterway and a report has
12 previously been made that the vessel has been stolen or a complaint
13 has been filed and a warrant thereon issued charging that the vessel
14 has been embezzled.

15 (3) When the person or persons in charge of the vessel are by
16 reason of physical injuries or illness incapacitated to an extent as
17 to be unable to provide for its custody or removal.

18 (4) When an officer arrests any person operating or in control
19 of the vessel for an alleged offense, and the officer is, by any
20 provision of this code or other statute, required or permitted to
21 take, and does take, the person arrested before a magistrate without
22 unnecessary delay.

23 (5) When the vessel interferes with, or otherwise poses a danger
24 to, navigation or to the public health, safety, or welfare.

25 (6) When the vessel poses a threat to adjacent wetlands, levies,
26 sensitive habitat, any protected wildlife species, or water quality.

27 (7) When a vessel is found or operated upon a waterway with
28 a registration expiration date in excess of one year before the date
29 on which it is found or operated on the waterway.

30 (b) Costs incurred by a public entity pursuant to removal of
31 vessels under subdivision (a) may be recovered through appropriate
32 action in the courts of this state.

33 ~~SECTION 1.~~

34 *SEC. 2.* Section 6302.1 of the Public Resources Code is
35 amended to read:

36 6302.1. (a) (1) The commission may take immediate action,
37 without notice, to remove from areas under its jurisdiction a vessel,
38 boat, raft, or other similar watercraft that is left unattended and is
39 moored, docked, beached, or made fast to land in a position as to
40 obstruct the normal movement of traffic or in a condition as to

1 create a hazard to navigation, other vessels using a waterway, or
2 the property of another.

3 (2) The commission may take immediate action, without notice,
4 to remove from areas under its jurisdiction a vessel, boat, raft, or
5 other similar watercraft that poses a significant threat to the public
6 health, safety, or welfare or to sensitive habitat, wildlife, or water
7 quality, or that constitutes a public nuisance.

8 (3) After removal of the vessel, boat, raft, or other similar
9 watercraft pursuant to paragraph (1) or (2), the commission shall
10 mail a notice to the owner, if known, and any known lienholder,
11 that informs the owner and lienholder that the commission may
12 dispose of the vessel, boat, raft, or other similar watercraft pursuant
13 to Section 6302.3 if it remains unclaimed for 30 days.

14 (b) (1) The commission may remove from areas under its
15 jurisdiction a vessel, boat, raft, or other similar watercraft, or a
16 buoy, anchor, mooring, or other ground tackle used to secure a
17 vessel, boat, raft, or other similar watercraft that has been placed
18 on state lands without its permission. Prior to removal of the vessel,
19 boat, raft, or other similar watercraft, or the buoy, anchor, mooring,
20 or other ground tackle, the commission shall give a 30-day notice
21 by attaching it to the vessel, boat, raft, or other similar watercraft,
22 or to the buoy, anchor, mooring, or other ground tackle. If the
23 owner or any lienholder is known, the commission shall also mail
24 a notice to the owner and the lienholder.

25 (2) After the expiration of the 30 days' notice period as provided
26 in paragraph (1), the commission may remove the vessel, boat,
27 raft, or other similar watercraft, or the buoy, anchor, mooring, or
28 other ground tackle or allow it to remain in place until disposed
29 of as provided in Section 6302.3.

30 (c) Pursuant to Section 6302.2, the commission may dispose of
31 a vessel, boat, raft, or other similar watercraft, or a buoy, anchor,
32 mooring, or other ground tackle removed under this section that
33 remains unclaimed 30 days after removal.

34 (d) Upon request of the owner and after payment of the costs
35 of removal and storage, the commission shall return to the owner
36 a vessel, boat, raft, or other similar watercraft, or a buoy, anchor,
37 mooring, or other ground tackle removed under this section.

38 (e) The commission may recover costs incurred in removal
39 actions undertaken pursuant to this section through appropriate
40 action in the courts of this state.

(f) For purposes of this section the following definitions apply:

(1) “Appropriate action” means any cause of action available at law or in equity.

(2) “Commission” includes the staff or agents of the commission or other federal, state, or local agencies operating in concert with or under the direction of the commission.

~~SEC. 2.~~

SEC. 3. Section 6302.2 is added to the Public Resources Code, to read:

6302.2. (a) A hulk, derelict, wreck, or parts of a ship, vessel, or other watercraft, sunk, beached, grounded, or floating and allowed to remain in an unseaworthy or dilapidated condition in areas under the commission’s jurisdiction for a period longer than 30 days without its consent is abandoned property.

(b) Pursuant to Section 6302.3, the commission may take title to abandoned property described in subdivision (a) for the sole purpose of abatement, and without satisfying any lien on the property, may cause the property to be sold, destroyed, or otherwise disposed of in any manner it determines is expedient or convenient. Title to property transferred by the commission by sale or otherwise to third parties shall be clear of any lien or encumbrance.

(c) Prior to making a disposition of abandoned property pursuant to Section 6302.3, the commission shall use reasonable means to identify and locate the owner and any lienholder. If the owner is located, the commission shall give the owner written notice to remove the property by a date certain at least 15 days from the date of the notice. Notice to the owner to remove the property shall also be posted on the property, if practicable, in a clearly visible place. If the owner cannot be located or the owner fails to respond to the mailed or posted notice or fails to remove the property within the time provided or extended, the commission may direct disposition of the property pursuant to Section 6302.3.

(d) The commission’s cost of disposing of abandoned property, including staff time and legal and attorney’s fees, may be recovered by appropriate action in any court in which an action may be properly brought or by use of any available administrative remedy. If the property is sold, the commission may recover its costs from any proceeds of the sale and any additional funds received shall be deposited into the General Fund.

(e) The commission, at its discretion, may remove an abandoned or derelict vessel on a navigable waterway in the state that is not under the jurisdiction of the commission pursuant to this section, if requested to do so by another public entity that has regulatory authority over the area where the vessel is located.

~~SEC. 3.~~

SEC. 4. Section 6302.3 is added to the Public Resources Code, to read:

6302.3. (a) The commission shall direct disposition of property subject to disposal pursuant to Section 6302.1 or 6302.2 at a properly noticed commission meeting. The commission shall use reasonable means to identify and locate the owner and any lienholder of property that may be disposed of at that hearing.

(b) Notice of that meeting shall be given to a known owner and known lienholder, and the known owner, lienholder, or other interested party shall be given the right to appear and be heard prior to disposition of the property.

(c) A hearing on the disposition of property held pursuant to this section shall be an informal hearing pursuant to Section 11445.20 of the Government Code, unless designated as a formal hearing by the commission.

(d) Any action with regard to the disposition of the property as directed by the commission, with the exception of returning the property to the owner, shall be delayed for 30 days after the date of the commission's determination, to permit response by the owner.

~~SEC. 4.~~

SEC. 5. Section 6302.4 is added to the Public Resources Code, to read:

6302.4. (a) At the request of the commission, an employee or agent of the commission or a peace officer of the federal or state government or a city, county, or other political subdivision of the state shall have the authority to board a vessel for the purposes of carrying out Section 6302.1, 6302.2, or 6302.3.

(b) An action of the commission with regard to any property acquired or disposed of pursuant to Section 6302.1, 6302.2, or 6302.3 is exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000)), and from any other law or regulation that governs the

1 *laws or regulations that govern the* acquisition, disposal, or
2 destruction of property by a state agency.

3 ~~SEC. 5.~~

4 *SEC. 6.* Section 6302.5 is added to the Public Resources Code,
5 to read:

6 6302.5. To the extent that Sections 6302.1, 6302.2, 6302.3,
7 and 6302.4 may be in conflict with Article 1 (commencing with
8 Section 510) of Chapter 3 of Division 3 of the Harbors and
9 Navigation Code, Sections 6302.1, 6302.2, 6302.3, and 6302.4
10 shall govern.